

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

UTILITY AIR REGULATORY GROUP,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 12-1342
	)	and consolidated cases
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondents	)	
_____	)	

**RESPONSE OF NATIONAL PARKS CONSERVATION  
ASSOCIATION AND SIERRA CLUB TO EPA’S  
MOTION TO GOVERN FURTHER PROCEEDINGS**

Petitioners National Parks Conservation Association and Sierra Club (collectively “NPCA”) do not oppose a limited 60-day continuation of the stay of these proceedings. However, NPCA does not agree with Respondent United States Environmental Protection Agency (“EPA”) that “it is appropriate to hold this case in abeyance pending resolution” of proceedings in *EME Homer City*. (EPA Mot. at 2.) There is no justification for staying these proceedings indefinitely. It has now been thirty-one days since the Supreme Court ruled, validating EPA’s regulatory approach under the Cross-State Air Pollution Rule (“CSAPR”), and the unopposed 60-day stay

will give EPA significant additional time to consider how it would like to proceed in light of that decision.

Continued delay in this case – which involves a separate EPA action not directly at issue in *EME Homer City* – harms NPCA and the broader public interest in addressing air quality degradation from regional haze across the 28 states that are governed by the challenged regulation (the “BART Alternative Rule”)<sup>1</sup> at issue here. Over the last nineteen months, since this Court first ordered the consolidated cases to be held in abeyance (Order dated Oct. 9, 2012), the BART Alternative Rule has remained in effect, and as a result of EPA’s determinations in that rulemaking, EPA and state agencies have continued to rely on regional haze plans that depend on CSAPR, avoiding compliance with the source-specific pollution control requirements of the Clean Air Act’s visibility provisions, 42 U.S.C. §§ 7491-92.

Accordingly, NPCA respectfully requests that the Court issue an order that limits continuation of the stay to the 60 days requested by EPA and directs the parties to present the Court with a briefing schedule or other

---

<sup>1</sup> See Regional Haze: Revisions to Provisions Governing Alternative Sources to Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans, 77 Fed. Reg. 33,642 (June 7, 2012) (the “BART Alternative Rule”).

proposal for advancing resolution of these consolidated cases at the end of that 60-day period.

Respectfully submitted on this 30th day of May, 2014,

/s/ Thomas Cmar

---

Thomas Cmar  
EARTHJUSTICE  
5042 N. Leavitt St., Ste. 1  
Chicago, IL 60625  
(312) 257-9338  
tcmar@earthjustice.org

Abigail Dillen  
Jocelyn D'Ambrosio  
EARTHJUSTICE  
48 Wall Street, 19th Floor  
New York, New York 10005  
(212) 791-1881  
adillen@earthjustice.org  
jdambrosio@earthjustice.org

*Counsel for Petitioners  
National Parks Conservation  
Association and Sierra Club*

**CERTIFICATE OF SERVICE**

I, Thomas Cmar, hereby certify that I have this day served a true and correct copy of the foregoing Response of National Parks Conservation Association and Sierra Club to EPA's Motion to Govern Further Proceedings through the Court's electronic case filing system on the following:

Jessica O'Donnell  
jessica.odonnel@usdoj.gov

Donald James Trahan  
donald.trahan@la.gov

Peter S. Glaser  
peter.glaser@troutmansanders.com

Norman Louis Rave, Jr.  
norman.rave@usdoj.gov

Philip Stephen Gidiere, III  
sgidiere@balch.com

David Michael Flannery  
dave.flannery@steptoe-johnson.com

Margaret Claiborne Campbell  
margaret.campbell@troutmansanders.com

Timothy Jay Junk  
tim.junk@atg.in.gov

Byron W. Kirkpatrick  
byron.kirkpatrick@troutmansanders.com

Thomas Lee Casey, III  
tcasey@balch.com

Norman William Fichthorn  
nfichthorn@hunton.com

Peter Douglas Keisler  
pkeisler@sidley.com

Martin F. McDermott  
martin.mcdermott@usdoj.gov

C. Frederick Beckner, III  
rbeckner@sidley.com

David A. Carson  
david.a.carson@usdoj.gov

Timothy Kenly Webster  
twebster@sidley.com

Edward Louis Kropp  
skipp.kropp@steptoe-johnson.com

Herman Robinson  
herman.robinson@la.gov

Kathy M. Wright  
kathy.wright@la.gov

Elliot Bee Vega  
elliot.vega@la.gov

Jackie Marie Scott Marve  
jackie.marve@la.gov

Roger Romulus Martella  
rmartella@sidley.com

Hahnah Williams  
hahnah.williams@troutsmansanders.com

Aaron Michael Flynn  
flynna@hunton.com

Mark L. Walters  
mark.walters@texasattorneygeneral.gov

Donna J. Hodges  
donna\_hodges@deq.state.ms.us

Renee Cipriano  
rcipriano@schiffhardin.com

James Michael Showalter  
j.michael.showalter@gmail.com

Dated: May 30, 2014

/s/ Thomas Cmar  
Thomas Cmar  
Earthjustice  
5042 N. Leavitt St., Apt. 1  
Chicago, IL 60625  
(312) 257-9338  
tcmar@earthjustice.org